IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2428 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHMMED AKHATAR ABBUBKAR SHEIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2428 of 2002

MS BANNA S DUTTA for Petitioner No. 1

MR ANIL S DAVE for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/05/2002

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 29-1-2002 passed by the Police Commissioner, Ahmedabad City and he has been branded as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat

Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Though various contentions were raised in the petition, learned advocate for the petitioner has restricted her arguments on the point of judicial custody of the detenu at the time of passing the detention order. Learned advocate for the petitioner has submitted that the detention order has been passed relying upon solitary offence registered against the petitioner before Vejalpur Police Station being C.R.No.13 of 2002 on 17-1-2002 under Secs.120-B, 387, 507 and 34 of Indian Penal Code and also relying upon two statements recorded on 23-1-2002 and verified on 25-1-2002. Drawing my attention towards page 34 of the compilation which is the grounds of detention, Ms.Banna Datta has contented that when the order of detention was passed, the detenu was in judicial custody which aspect ought to have been considered by the authority while passing the detention order. In this connection, he has relied upon the case of Amritlal and Other Vs. Union Govt. Through Secy., Ministry of Finance and Others, AIR 2000 S.C. 3675 wherein it was held at Head note as under:

> "Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (46 of 1988), S.3--Satisfaction of detaining authority--"Likelihood of detenu moving an application for bail"--not sufficient--It is different from "Likelihood to be released on bail"".

4. It seems that there is non-application of mind on the part of detaining authority in passing the detention order as the detenu was in judicial custody when the order of detention was passed which aspect has not been

considered by the authority and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 29-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Mohmmed Akhatar Abbubkar Sheikh is ordered to be set at liberty forthwith, if not required in any other case. Ld. advocate for the petitioner states at the bar that the detenu will stay away from Ahmedabad for a period of fifteen days from today. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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